IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.639 OF 2004

Subhash S. Bhanushali and others).. Appellants

Versus

Suresh Ramji Gajra and others).. Respondents

Mr.C.U.Singh with Mr.Rohit Shetty and Mr.G.S.Godbole for the Appellants.

Mr.R.S.Apte with Mr.N.R.Bubna for Respondent Nos.1 & 7.

Mr.N.V.Walawalkar with Mrs.S.G.Deshpande for Respondent Nos.2 to 6.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 11TH OCTOBER 2004

P.C.:

. The Appeal From Order has been filed against the order dated 28th April 2004 passed by the Civil Judge, Senior Division, Thane dismissing the application for temporary injunction. The Suit filed by the Appellants-Plaintiffs is for specific performance of an agreement entered into by the Plaintiffs and Defendant No.1. The Plaintiffs have styled this agreement in the Plaint as a "Development Agreement". It is submitted on behalf of the Plaintiffs that this was a joint venture of the Plaintiffs and Defendant No.1 where the Defendant No.1 had handed over possession of the suit property to them to enable them to develop the suit property. A grievance is now made that the Defendant Nos.2 to 6 are

seeking to develop the same suit property after entering into "a second development agreement" with Defendant No.1.

2. The trial Court has rightly considered the fact that though the nomenclature of the agreement is not material for deciding whether the agreement is a development agreement, the clauses of the agreement prima facie do not indicate that the intention of the parties was to enter into an agreement of sale. The agreement prima facie appears to be in essence a development agreeemnt. A breach of such an agreement could be compensated by way of damages. Reliance has also been placed by the trial Court on the judgment of the Division Bench of this Court in the case of *Narayan Ramchandra* vs. *Mahabhodi Society of India and others* (**Appeal No.285 of 1988 in Notice of Motion No.76/1987 in Suit No.3419/1986**) where it has been held that in essence the suit agreement is a development agreement where the aim of the professional builder/contractor is to take a profit by completing building and selling the flats at a profit a breach of such agreement can be compensated by way of damages. A similar view has also been taken in *Minesh Nanalal Thaker* vs. *Ramesh Ramchandra Vaity and others* (**Appeal From Order No.298/2000**).

4. The suit agreement contains rigorous clauses of

which there can be no specific performance under Section 14(3) of the Specific Reliefs Act. The Plaintiffs would therefore not be entitled to a temporary injunction. I see no reason to interfere with the order of the trial Court which has been passed on 28th April 2004. Appeal From Order dismissed.

4. In view of the disposal of the Appeal From Order, nothing survives in Civil Application No.861 of 2004 and the same is disposed of accordingly.